

**GTE CORPORATION
BELL ATLANTIC CORPORATION
Joint Application For The Approval
Of A Corporate Reorganization Involving
A Merger of GTE Corporation And
Bell Atlantic Corporation**

**REPLY BRIEF OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION**

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NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and for its initial brief in this proceeding, states as follows:

I. INTRODUCTION

Initial briefs were filed in this proceeding by GTE Corporation and Bell Atlantic Corporation (hereafter “Joint Applicants”); AT&T Communications of Illinois, Inc. (“AT&T”); Sprint Communications Company L.P. d/b/a Sprint Communications (“Sprint”); and the Staff of the Illinois Commerce Commission (“Staff”).

Staff has addressed most of the points raised in the initial briefs of the parties in its initial brief and in the interest of brevity, will not reiterate those points again. While Staff will comment on several specific points raised in the initial briefs, the absence of a response in this reply brief should not be construed to mean that Staff concurs with those positions; rather, it means that Staff has adequately described its position in its initial brief or that Staff believes no further comment is necessary.

A. SUMMARY OF STAFF’S POSITION

Based on its analysis of the proposed merger, Staff concludes that, the proposed merger, as filed, fails all of the requirements set forth in section 7-204 with the exception of the requirements set forth in Sections 7-204(b)(4) which requires that the proposed merger not diminish the public utility’s ability to have access to capital. The areas that Staff believes fail to meet the requirements under 7-204 include the

impact of the proposed merger on local exchange competition, service quality, cross subsidization, regulatory oversight and merger-savings flow-through issues. Staff, however, concludes that if the Commission adopts Staff's proposed conditions, the proposed merger will meet all of the requirements of Section 7-204. The Joint Applicants committed to implementing several of Staff's conditions, and therefore, Staff believes the Commission should grant the Joint Applicants merger application with the inclusion of Staff's proposed conditions.

II. ARGUMENTS

A. THE COMMISSION SHOULD ADOPT STAFF'S PROPOSED CONDITIONS TO GUARANTEE THAT THE PROPOSED REORGANIZATION WILL NOT LIKELY DIMINISH THE UTILITY'S ABILITY TO PROVIDE ADEQUATE, RELIABLE, EFFICIENT, SAFE AND LEAST-COST PUBLIC UTILITY SERVICE (7-204(b)(1))

1. It is within the Commission's jurisdiction to determine that People with disabilities will not incur diminished telecommunications service because of the proposed merger.

Joint Applicants' stated that Staff and Applicants have an unresolved, but relatively narrow, disagreement regarding the provision of services to individuals with disabilities. (BA/GTE Initial Brief at 16). Staff witness Jackson recommended that the Commission condition the merger approval on GTE committing to adopt Bell Atlantic's Universal Design Principles ("Design Principles") and to create an advisory council. (BA/GTE Initial Brief at 17). Joint Applicant's stated that testimony at the hearing

indicated that the issues relative to establishing an advisory council have been resolved. (*Id.*) In response to Staff witness Jackson's Direct Testimony on this issue, GTE proposed an advisory council be established not in this docket, but through an industry-wide approach, to reduce redundancy, promote standardization and to be consistent with the Commission's traditional approach on similar matters. (*Id.*) GTE made a presentation to the Illinois Telecommunications Association ("ITA") requesting that the ITA sponsor the industry wide council, however, the ITA rejected the proposal, GTE has committed that it will participate in any docket the Commission might initiate to address services to individuals with disabilities.

Joint Applicants contend that at the hearing, Staff witness Jackson acknowledged that Staff's proposed condition related to a disabilities advisory council would be satisfied if the Commission opened a docket to address the issue on a uniform industry wide basis. At the hearing, Staff witness Jackson stated that she would not object to GTE opening a docket to address the issue on a uniform statewide industry-wide basis. (Tr. at 351). However, Staff does not agree with the Joint Applicants' interpretation of Ms. Jackson's response. While Staff does not object to the alternative, it does not mean that Staff is satisfied. Staff continues to believe that people with disabilities have not received the same services and features and that it is Joint Applicants' responsibility to work with people with disabilities directly to implement the services and features that will serve them. (Tr. at 349). If the members of the ITA are not willing to work with their peers, outside of the regulatory environment, to sponsor an

industry wide council, they are not going to participate in a Commission docket to do the same. Additionally, the local exchange telephone companies in Illinois did not request this merger and they should not be drawn into this process, just because GTE wants to place the burden of this condition on the Commission, rather than themselves.

Companies constantly accuse Staff of trying to micro-manage or micro-regulate their business. Staff's condition gives the Joint Applicants the opportunity to initiate a process that would remedy the deficient service to people with disabilities, and now the Joint Applicants want a Commission process. Bell Atlantic has experience in this area, GTE should use Bell Atlantic's experience. Staff does not oppose GTE joining forces with SBC and Ameritech, if that merger is approved, and welcomes a statewide industry approach. However, it is imperative that GTE address and correct the deficient telecommunications services it provides to people with disabilities. This merger gives GTE the opportunity to correct the deficiency by complying with Staff's condition and employing Bell Atlantic's demonstrated best practices serving people with disabilities.

Staff disagrees with the Joint Applicants position that Staff's condition does not fall within the purview of this merger. (BA/GTE Initial Brief at 63). People with disabilities have the same rights as everyone else to receive adequate, reliable, efficient, safe and least-cost utility service, as defined in Section 7-204(b)(1) of the Public Utilities Act ("PUA"). Staff witness Jackson's testimony outlines the deficiencies in GTE's service, and in order to satisfy the Section 7-204(b)(1) GTE must offer some showing that service to people with disabilities will be adequate, reliable, efficient, safe

and least cost. Staff's condition proposes to increase the quality to service offered to people with disabilities so that the record reflects that GTE has met its obligation under Section 7-204(b)(1) of the PUA.

GTE also committed to reviewing the Design Principles and evaluating the advisability of adopting them within the Merger Integration "best practices" process. (BA/GTE Initial Brief at 17). GTE witness Weise also testified that review of the Design Principles was important to evaluate the economic and technical feasibility of implementation. (BA/GTE Initial Brief at 18). Joint Applicants' stated that Staff witness Jackson did not testify at hearing about this aspect of her proposed Condition on this subject and that Applicants committed to a careful consideration of the Design Principles within the integration process. The Hearing Examiner did not cross examine Staff about this particular part of the proposed Condition. However, Staff remains firm in its position that Joint Applicants should be required to implement the Design Principles. Illinois consumers with disabilities' telecommunications service would be greatly enhanced by the implementation of the Design Principles.

Additionally, on July 14, 1999, the Federal Communications Commission ("FCC"), in Docket No. 96-198 adopted rules to implement Section 255 of the Telecommunications Act of 1996 and Section 251(a)(2) of the Communications Act of 1934, that require manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to and usable by persons with disabilities, if readily achievable. These rules will give

people with disabilities access to products and services, such as telephones, cell phones, pagers, call waiting, operator services, etc. that they cannot use today. This merger is one vehicle for GTE to comply with the FCC rules and deliver these services to people with disabilities.

2. It is within the Commission's jurisdiction to determine that 9-1-1 service will not diminish because of the proposed merger and that safe utility service continues to be offered to GTE's customers.

Staff agrees with the Joint Applicants that most of the 9-1-1 issues have been resolved. (Staff Initial Brief at 7-9). However, the Joint Applicants contend that these proposed conditions regarding 9-1-1 service are unnecessary and go beyond the scope of what the Illinois statute requires. (BA/GTE Initial Brief at 16-17). Instead, the Joint Applicants have offered to advise Staff of modifications to GTE's 9-1-1 staffing levels and arrangements.

Staff does not believe that the Joint Applicants' proposal goes far enough. Staff's testimony outlined the communication problems GTE has had with 9-1-1 systems, and how GTE's failure to communicate jeopardizes GTE's 9-1-1 service. Neither GTE nor Bell Atlantic have given any assurances that GTE's 9-1-1 program will have executive management authority to resolve any 9-1-1 problems with its network and 9-1-1 systems.

Additionally, neither GTE nor Bell Atlantic presented any evidence that GTE's Illinois 9-1-1 resources would not have to compete with other Bell Atlantic/GTE

subsidiaries for resources. If GTE does not allocate the proper resources or have executive management authority to use those resources, many 9-1-1 issues will remain unresolved and threaten the integrity of Illinois' 9-1-1 systems.

Obtaining prior Commission approval before removing or reducing 9-1-1 staff in Illinois is not meant to place limitations on GTE's ability to meet the Commission's standards in an efficient manner. Rather, the intent is for the Commission to proactively ensure that any changes will not adversely impact or jeopardize the integrity of the Illinois 9-1-1 program. The Commission is the agency that is authorized by the Emergency Telephone System Act [50 ILCS Act 750] to coordinate the implementation of systems, consult with other state agencies, and develop technical and operational guidelines for the 9-1-1 program in Illinois. GTE has the largest service territory in the State of Illinois, and this merger impacts the quality of 9-1-1 services delivered to those service areas. The Commission's role is to ensure that the integrity of the program is not compromised by this merger. The Commission would be fulfilling its obligations under the Emergency Telephone System Act by approving GTE's proposed changes to its 9-1-1 service. Merely notifying Staff does not give the Commission any time to act if GTE's plan is not complete or does not adequately notify the 9-1-1 systems.

In light of the importance of this issue and its underlying policy implication, the Commission should not adopt GTE's recommendation to "advise Staff prior to reductions in staff involved in providing 9-1-1 service" and "to advise Staff prior to any changes that are made in the delivery of 9-1-1 service." Instead, the Commission

should adopt Staff's recommendation that GTE notify the Commission of any post merger changes to the 9-1-1 system in order to ensure compliance with Section 7-204(b)(1).

3. The Commission should adopt Staff's service quality conditions.

Staff reiterates the position it took in its Initial Brief regarding this proposed reorganization's impact on service quality in Illinois. PUA Subsection 7-204(b)(1) provides: "In reviewing any proposed reorganization, the Commission must find that - the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service." 220 ILCS 5/7-204(b)(1). Staff maintains that without the adoption of Staff's recommended conditions, the proposed reorganization will likely diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service.

a) Monthly Service Quality Reporting

In their Initial Brief, the Joint Petitioners take exception with Staff's proposed condition that the reorganized company provide the Commission with "written monthly service quality performance reports relative to Code Part 730 requirements for the next three years." (ICC Staff Ex. 4.00 at 17). Specifically, the Joint Petitioners argue that Code Part 730 reporting requirements "should be addressed within the rulemaking docket currently before the Commission examining service quality standards and

reporting (*ICC Docket # 98-0453*).“ (BA/GTE Initial Brief at 16). According to the Joint Petitioners, “the generic issues related to all service quality reporting are more properly developed and decided in the Part 730 rulemaking proceeding.” (BA/GTE Initial Brief at 16).

Although the Joint Petitioners correctly assert that Code Part 730 does not currently require regular reporting of service quality performance (BA/GTE Ex. 3.1 at 14-15), that should not impact the Commission’s decision to impose Staff’s recommended condition regarding monthly reporting on this merger.

The Commission should be aware that GTE has argued against any kind of service quality reporting in the current rulemaking addressing Code Part 730 (Docket #98-0453). Joint Petitioners seem to be taking the stance that they should not be treated any differently from other Illinois carriers subjected to Code Part 730. The point that the Joint Petitioners seem to be missing is that other Illinois carriers aren’t appearing before this Commission asking for approval of a \$54 billion merger.

As Staff pointed out in its Initial Brief, the evidentiary record is replete with examples of the Joint Petitioners’ recent troubled history with certain service quality standards. (See Staff Initial Brief at 19). Indeed, the Joint Petitioners’ own witness admitted as much during cross-examination. (Tr. at 107). More importantly, the Commission itself has also had a recent bad experience with a reorganization resulting in the deterioration of service quality (ie. Ameritech Illinois’ acquisition of Sprint Metro). (See Staff Initial Brief at 19). Concern over the possibility of such an experience being

replayed should greatly outweigh any “burden” placed on the Joint Petitioner’s in reporting information that will be amassed by them anyway.

Given all this, Staff maintains that the Commission should adopt its proposed condition regarding monthly reporting before it deems the Section 7-204(b)(1) statutory criteria satisfied.

b) Network Investment in Illinois

As Staff pointed out in its Initial Brief, a careful examination of the record evidence indicates that technological deployment in Illinois lags behind the remainder of the GTE system. (Staff Initial Brief at 21-22). The Joint Petitioners, however, emphasize the fact that they have “committed on the record to invest in Illinois . . . not less than \$234 million in infrastructure capital investment . . . in the next three years.” (BA/GTE Initial Brief at 13-14).

Once again, Staff believes that GTE’s commitment of \$234 million over three years is inadequate in light of GTE’s historical level of investment in Illinois. This amount is not on par with GTE’s previous five year investment amounts in Illinois. (See Staff Initial Brief at 22; See *also* TR. at 389-392).

The Commission should utilize this opportunity to ensure that network investment in Illinois leads to technological parity with other GTE jurisdictions. The Joint Petitioner’s have not satisfactorily explained why Illinois should continually lag behind other states in the GTE territory.

In short, the Joint Petitioners have failed to offer any significant improvement in the area of network investment other than what it has invested in the past. The Joint Petitioner's \$234 million commitment does not alleviate Staff's original concerns regarding the merger's impact on Illinois service quality in the absence of parity with the remainder of GTE's service territories. Staff, therefore, maintains that absent its proposed condition on network investment, the Commission cannot conclude that this merger will not diminish the utility's ability to provide adequate service, as required by PUA Section 7-204(b)(1).

B. THE FCC AND ILLINOIS CAM FILINGS WILL ASSIST THE COMMISSION IN FINDING THAT COSTS AND FACILITIES ARE FAIRLY AND REASONABLY ALLOCATED BETWEEN UTILITY AND NON-UTILITY ACTIVITIES FOR RATEMAKING PURPOSES PURSUANT TO SECTION 7-204(b)(3).

In its initial brief, Joint Applicants indicate that Staff substantially agreed to Applicants' proposal to provide a copy of the FCC Cost Accounts Manual ("CAM") to the Illinois Commission at the same time it is provided to the FCC (within 60 days following merger consummation), then provide a specific Illinois CAM 60 days thereafter. (BA/GTE Brief at 19-20). Staff notes that it reluctantly agreed to this condition because Joint Applicant witness Shore testified that filing the Illinois CAM simultaneously with the FCC CAM was impractical because of the extensive reformatting required once the FCC CAM is completed. (Tr. at 124). Staff reiterates its reluctance to this agreement since BA/GTE witness Shore testified during cross-

examination that the primary reason the Joint Applicants cannot meet Staff's alternative condition (to file the Illinois CAM at the same time as the FCC CAM) was due to manpower. (*Id.*). Staff had agreed that a FCC CAM filed instead of an Illinois-specific would be acceptable since Joint Applicants testified that the only difference in the FCC and Illinois CAMs is the format. (Tr. at 269 and 124) Staff maintains that it can and will work with the FCC CAM for the 60 days until an Illinois-specific CAM is provided, if that is the decision of this Commission. However, in making this concession, Staff notes that it seems very strange that a company as large as GTE, and with the additional resources that it will gain through a merger with Bell Atlantic, cannot provide additional manpower necessary to reformat a manual that it is required to provide according to the laws of this state.

C. THE COMMISSION SHOULD ADOPT STAFF'S PROPOSED CONDITIONS TO GUARANTEE THAT THE PROPOSED REORGANIZATION WILL NOT LIKELY HAVE A SIGNIFICANT ADVERSE EFFECT ON COMPETITION WITHIN THE MARKETS OVER WHICH THE COMMISSION HAS JURISDICTION.

The Applicants state that this merger is not the proper forum to adjudicate the issue of common transport and that GTE currently provides the service as an unbundled network element to competitors in Illinois. (Peterson Rebuttal, BA/GTE Ex. 8.00 at 14). Further, the Applicants' witness Peterson avers that GTE has not refused to provide common transport and that no CLEC has complained about the supplying of common transport. (*Id.*)

Staff agrees with the Applicants that the issue of providing common transport by GTE has not been a problem to date. (Gasparin Direct, ICC Staff Ex. 8.00 at 6). However, Staff emphasizes that common transport is a very important element needed by competitors to foster competition in GTE's service territory. (Gasparin Direct, ICC Staff Ex. 8.00 at 4). If the Applicants are willing to provide common transport as they have contended through out this case, then the Applicants should not be concerned that this offering be included as part of the conditions set forth in the Commission's final order.

Finally, it should be noted that SBC/Ameritech have committed to provide common transport, and therefore, the Joint Applicants should be required to do the same. (ICC Docket 98-0555 HEPO August 10, 1999)

D. THE COMMISSION SHOULD NOT ALLOW GTE TO NET MERGER COSTS AGAINST MERGER SAVINGS

Joint Applicants state that ". . . [o]nce merger costs are netted against merger savings and after the net savings are properly allocated to intrastate regulated ILEC operations in Illinois . . ." (BA/GTE Initial Brief at 7). As stated in the testimony of Staff witness Price, Staff does not agree that end users should pay the merger transaction costs for operating companies. (Staff Initial Brief at 53). Staff also does not believe that the Joint Applicants should be allowed to net merger costs. (*Id.* at 55). However, if the Commission were to allow netting of merger costs against merger savings, Staff does not agree that merger transaction costs should be a part of that netting process.

Staff believes that the only costs to be recovered from end users through rates would be those costs applicable to the operations of the regulated operating companies. Staff reiterates that the immediate concern involving merger costs and savings will be alleviated by Joint Applicants' agreement to an up-front reduction in rates followed by a general rate case. (*Id.* at 55-56). Staff advises that the Commission should re-address the passing on of merger costs to rate payers in GTE's future general rate case proceeding.

1. Price-to-Cost Relationship.

Staff believes that the commitments of the Joint Applicants have currently satisfied the requirement set forth in Section 7-204(b)(7) of the PUA. However, if the objectives of the general rate case include analyzing the price-to-cost relationships of GTE's services and adjusting GTE's rates accordingly, the second standard of 7-204(b)(7) could be compromised. As set forth in its initial brief, Staff utilizes two standards to analyze this requirement. (See Staff Initial Brief at 46). First, the Joint Applicants must prove that the merger will not likely necessitate rate increases to GTE's retail services. Second, the Joint Applicants must prove that the proposed merger will not likely have an adverse impact on the price-to-cost relationship of GTE's services currently priced above cost. (Staff Ex. 1.00 at 14 and Staff Ex. 3.00 at 9).

Staff notes that the Joint Applicants misrepresent the testimony of Staff witness Phipps regarding to the price-to-cost relationship issue. In their initial brief the Joint Applicants state:

“ . . . Staff has agreed that Applicants commitments alleviate the need for a merger approval condition related to cost-to-price relationship. (Tr. 313 (Phipps)).”

(Footnotes omitted, BA GTE Initial Brief at 59).

As reflected in the transcript, Staff witness Phipps referred to Staff's condition number three which alleviates the need for the Joint Applicants to file annual TELRIC, shared and common cost studies that reflect Commission-approved merger-related cost and savings. (Tr. at 312-313). During cross examination, Staff witness Phipps never mentioned price-to-cost relationships or adverse rate impacts.

Although Staff has not proposed a specific merger approval condition related to the price-to-cost relationship and Staff has agreed that the general rate case is an appropriate forum to address this issue, it is imperative that the Commission implement Staff's second standard for analyzing Section 7-204(b)(7), to protect GTE's Illinois ratepayers from future adverse rate impacts. If the Commission were to disregard this standard, GTE could utilize this merger as a vehicle to increase the mark-up to its services, thereby making Illinois ratepayers worse off subsequent to the merger. To this end, the Commission should find that the general rate case, scheduled to occur in Phase III, is an appropriate forum for addressing the price-to-cost relationship of GTE's retail services and, at that time, if GTE has realized decreases in incremental costs for its services, the associated rates should be appropriately adjusted downward so that the ratepayers are not worse off subsequent to the merger.

III. CONCLUSION

WHEREFORE, for all the reasons set forth, and the reasons stated in Staff's initial brief, Staff's proposals and recommendations should be adopted by the Commission, *in toto*.

Respectively Submitted,

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